

AMENDED IN SENATE AUGUST 14, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1092

Introduced by Assembly Member ~~Bonnie Lowenthal~~ *Fuentes*

February 18, 2011

An act to add ~~Section 185032.1 to the Public Utilities Code, relating to high-speed rail and repeal Article 1.5 (commencing with Section 19535) of Chapter 7 of Part 10.2 of Division 2 of the Revenue and Taxation Code, relating to taxation, and declaring the urgency thereof, to take effect immediately.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 1092, as amended, ~~Bonnie Lowenthal~~ *Fuentes*. ~~High-speed rail. Taxation: undocumented immigrants.~~

Existing law creates within state government the Department of Justice. Existing law provides that the department is under the direction and control of the Attorney General. Existing law requires the Franchise Tax Board to, among other things, administer personal and corporation income tax laws and certain other nontax programs, including the collection of specified delinquent debt.

This bill would establish a program until January 1, 2020, that would require the Department of Justice, until January 1, 2018, to report to the Franchise Tax Board information on a qualified person, defined as, among others, a person who is not eligible to receive a social security number; but who has filed a state income tax return with a valid individual taxpayer identification number. The bill would require the Franchise Tax Board to submit an annual report to the Legislature, until January 1, 2019, that details the tax receipts collected from qualified persons who participate in the program. The bill would provide

that information collected under the program is confidential and not subject to public disclosure under the California Public Records Act, except for purposes authorized under the act. The bill would require the destruction of all records collected under the act, as specified.

The California Constitution provides that the powers of state government are legislative, executive, and judicial. Existing law requires that the Governor see that the law is faithfully executed. Existing law provides that the Governor is the sole official organ of communication between the state and the government of any other state or of the United States. Existing federal law regulate immigration.

This bill would require the Governor to request that the President of the United States direct the Department of Homeland Security, United States Immigration and Customs Enforcement (ICE), and other relevant federal agencies to not expend resources during the term of the program to apprehend, detain, or remove any qualified person participating in the program, or to prosecute any individual employing a qualified person.

This bill would declare that it is to take effect immediately as an urgency statute.

~~Existing law, the California High-Speed Rail Act, creates the High-Speed Rail Authority to develop and implement a high-speed rail system in the state, with specified powers and duties. Existing law, pursuant to the Safe, Reliable High-Speed Passenger Train Bond Act for the 21st Century, approved by the voters as Proposition 1A at the November 4, 2008, general election, provides for the issuance of \$9.95 billion in general obligation bonds for high-speed rail and related purposes.~~

~~This bill would require the authority to report bianually to the Legislature beginning March 1, 2012, on the status of the project, including overall progress, the project budget, expenditures to date, a comparison of the current and project work schedule and the baseline schedule contained in the 2009 business plan, project milestones, and other related issues.~~

Vote: ~~majority~~^{2/3}. Appropriation: no. Fiscal committee: yes.
State-mandated local program: ~~no~~^{yes}.

The people of the State of California do enact as follows:

- 1 SECTION 1. *This act shall be known and may be cited as the*
- 2 *California Opportunity and Prosperity Act.*

1 *SEC. 2. Article 1.5 (commencing with Section 19535) is added*
2 *to Chapter 7 of Part 10.2 of Division 2 of the Revenue and Taxation*
3 *Code, to read:*

4
5 *Article 1.5. Undocumented Immigrants: State Income Taxes*

6
7 *19535. As used in this article:*

8 *(a) "Qualified person" means a natural person who meets all*
9 *of the following criteria:*

10 *(1) Is not eligible to receive a social security number.*

11 *(2) Filed a state income tax return with a valid individual*
12 *taxpayer identification number for the most recent taxable year*
13 *that a return was required to be made with respect to taxes imposed*
14 *under Part 10 (commencing with Section 17001).*

15 *(3) Is not employed by a public entity, including, but not limited*
16 *to, the federal government, the State of California, any*
17 *administrative subunit of the state, or any political subdivision of*
18 *the state, including any city, city and county, county, district, or*
19 *other local governmental agency or public agency authorized by*
20 *law.*

21 *(4) Declares that he or she is able to speak and understand the*
22 *English language or is enrolled in, or has applied to enroll in, an*
23 *English-as-a-second-language class.*

24 *(5) Has not been convicted of a felony under the laws of the*
25 *United States, the State of California, or any other state.*

26 *(6) Is not a member or suspected member of a terrorist*
27 *organization and has not engaged and is not expected to engage*
28 *in terrorist activities as those terms are defined in Section*
29 *1182(a)(3)(B) of Title 8 of the United States Code.*

30 *(7) Is not a public charge within the meaning of Section*
31 *1182(a)(4) of Title 8 of the United States Code.*

32 *(8) Declares that he or she has been a resident of California*
33 *continuously since at least January 1, 2008.*

34 *(9) Consents to a background check and the disclosure of any*
35 *information necessary to confirm eligibility for the program.*

36 *(10) Consents to the disclosure of his or her name and federal*
37 *individual taxpayer identification number to the Franchise Tax*
38 *Board in accordance with Section 19539.*

1 (b) *The language requirement in paragraph (4) of subdivision*
2 *(a) shall not apply to any person who meets any of the following*
3 *criteria:*

4 (1) *Is unable because of physical or developmental disability*
5 *or mental impairment to speak and understand English.*

6 (2) *Is over 50 years of age and has been living in the United*
7 *States for at least 20 years.*

8 (3) *Is over 55 years of age and has been living in the United*
9 *States for at least 15 years.*

10 (c) *“Program” means the program created by this article.*

11 19536. *There is hereby established a voluntary program to be*
12 *administered by the Department of Justice until January 1, 2018.*
13 *A qualified person may participate in the program under the*
14 *requirements set forth in this article.*

15 19537. (a) *A written application for admission to the program*
16 *by a qualified person shall be made in the form prescribed by the*
17 *Department of Justice. The application shall require that an*
18 *applicant provide a photograph or other electronically*
19 *transmissible image of the applicant.*

20 (b) (1) *Upon receipt of an application for admission to the*
21 *program and the fee provided for in Section 19538, the Department*
22 *of Justice shall cause an investigation to be made to determine*
23 *whether the applicant meets the definition of a qualified person.*

24 (2) *If the Department of Justice determines that an applicant*
25 *meets the definition of a qualified person, the Department of Justice*
26 *shall admit the applicant into the program and shall provide the*
27 *applicant with a confirmation of admission, which shall be valid*
28 *for one year from the date of issue.*

29 (3) *The Department of Justice shall renew a person’s admission*
30 *into the program on an annual basis upon payment of the renewal*
31 *application fee provided for in Section 19538 and a demonstration*
32 *that the person continues to meet the definition of a qualified*
33 *person.*

34 19538. *The Department of Justice shall charge each applicant*
35 *for the program a fee or annual renewal fee in an amount that*
36 *allows the agency to recover all reasonable costs incurred by it*
37 *in administering the program, including startup costs and costs*
38 *associated with confirming eligibility for the program.*

39 19539. *On or before December 31, 2013, and on or before*
40 *December 31 of each successive year, until January 1, 2018, the*

1 Department of Justice shall provide the Franchise Tax Board with
2 the name and federal individual taxpayer identification number
3 of each qualified person who was admitted into the program during
4 that calendar year. The Franchise Tax Board shall use the
5 information solely to prepare the report required by Section
6 19539.5 and shall not disclose the information for any purpose,
7 unless expressly provided for in this article.

8 19539.5. On or before December 31, 2014, and on or before
9 December 31 of each successive year, until January 1, 2019, the
10 Franchise Tax Board shall submit a report to the Legislature that
11 details the tax receipts collected during the immediately preceding
12 taxable year from qualified persons who participated in the
13 program. The report submitted by the Franchise Tax Board
14 pursuant to this section shall not contain any information that
15 identifies any specific qualified person who participated in the
16 program.

17 19540. (a) Any information disclosed by an applicant for, or
18 qualified person in, the program shall be used solely to administer
19 the program and shall not be used for any other purpose, unless
20 expressly provided for in this article.

21 (b) Any record containing any identifying information of an
22 applicant for, or qualified person in, the program shall not be
23 disclosed for any purpose, except as provided for in this article,
24 to the extent that the information is necessary to enforce a liability
25 that arises out of the Revenue and Taxation Code or the Family
26 Code, or as otherwise required by state or federal law. If
27 identifying information of an applicant for, or qualified person in,
28 the program is disclosed for a purpose authorized by this
29 subdivision, the recipient shall use the information solely for that
30 purpose and shall not disseminate the information any further.

31 (c) All identifying information of an applicant for, or qualified
32 person in, the program shall be confidential and exempt from
33 disclosure under the California Public Records Act (Chapter 3.5
34 (commencing with Section 6250) of Division 7 of Title 1 of the
35 Government Code).

36 19540.5. Unless expressly authorized or required by federal
37 law, this article shall not grant a qualified person any right or
38 privilege in any other state and shall not be used for any purpose
39 in any other state.

1 19540.6. *The Department of Justice and the Franchise Tax*
2 *Board may adopt regulations in accordance with Chapter 3.5*
3 *(commencing with Section 11340) of Part 1 of Division 3 of Title*
4 *2 of the Government Code as necessary to implement this article.*

5 19540.7. *On January 1, 2019, or as soon as practicable*
6 *thereafter, all records relating to the program that contain any*
7 *identifying information of applicants for, or qualified persons who*
8 *participated in, the program shall be destroyed including, without*
9 *limitation, any applications for the program and records provided*
10 *to the Franchise Tax Board pursuant to Section 19540. This section*
11 *shall not obligate the Franchise Tax Board to destroy any tax*
12 *returns or other records that are necessary to conduct an audit or*
13 *appeal pursuant to the Revenue and Taxation Code or to process*
14 *any taxpayer claim for refund.*

15 19540.8. *This article shall remain in effect only until January*
16 *1, 2020, and as of that date is repealed.*

17 SEC. 3. (a) *On or after July 1, 2013, the Governor is*
18 *authorized and directed to submit, as a ministerial act on behalf*
19 *of the state, a request to the President of the United States asking*
20 *that the President direct the Department of Homeland Security,*
21 *United States Immigration and Customs Enforcement (ICE) and*
22 *other relevant federal agencies not to expend resources during*
23 *the term of the program established by Article 1.5 (commencing*
24 *with Section 19535) of Chapter 7 of Part 10.2 of Division 2 of the*
25 *Revenue and Taxation Code of either of the following:*

26 (1) *The apprehension, detention, or removal of a qualified*
27 *person in the program or the qualified person's spouse or eligible*
28 *dependent, unless the qualified person, spouse, or eligible*
29 *dependent meets one of the priority enforcement criteria set forth*
30 *in the then-existing ICE policy on civil immigration enforcement.*

31 (2) *The prosecution of a person for employing a qualified person*
32 *pursuant to Section 1324a of Title 8 of the United States Code.*

33 (b) *On or after July 1, 2013, the Governor is further authorized*
34 *and directed, as a ministerial act on behalf of the state, to request*
35 *that the President provide any available waivers, exemptions, or*
36 *authorizations necessary to provide a safe harbor for individuals*
37 *and businesses from federal civil and criminal liability arising out*
38 *of a qualified person's participation in the program or the*
39 *employment of a qualified person during the term of the program.*

1 *SEC. 4. Section 19540 of the Revenue and Taxation Code, as*
2 *added by this act, imposes a limitation on the public's right of*
3 *access to the meetings of public bodies or the writings of public*
4 *officials and agencies within the meaning of Section 3 of Article*
5 *I of the California Constitution. Pursuant to that constitutional*
6 *provision, the people of California make the following finding to*
7 *demonstrate the interest protected by this limitation and the need*
8 *to protect that interest:*

9 *In order to protect the confidentiality and safety of a person who*
10 *participates in the program created by this act, it is necessary for*
11 *any identifying information that relates to that person to be exempt*
12 *from disclosure.*

13 *SEC. 5. The provisions of this measure are severable. If any*
14 *provision of this measure or its application is held invalid, that*
15 *invalidity shall not affect other provisions or applications that can*
16 *be given effect without the invalid provision or application.*

17 *SEC. 6. This act is an urgency statute necessary for the*
18 *immediate preservation of the public peace, health, or safety within*
19 *the meaning of Article IV of the Constitution and shall go into*
20 *immediate effect. The facts constituting the necessity are:*

21 *In order to preserve civil liberties and to ensure that the*
22 *Department of Justice has sufficient time to implement the program*
23 *before the 2013–14 tax year, it is necessary that this act take effect*
24 *immediately.*

25 ~~SECTION 1. Section 185032.1 is added to the Public Utilities~~
26 ~~Code, to read:~~

27 ~~185032.1. (a) Commencing March 1, 2012, and biannually~~
28 ~~thereafter, the authority shall provide a report to the Senate~~
29 ~~Committee on Transportation and Housing, the Assembly~~
30 ~~Committee on Transportation, the Senate Committee on Budget~~
31 ~~and Fiscal Review, and the Assembly Committee on Budget on~~
32 ~~the development and implementation of intercity high-speed train~~
33 ~~service pursuant to Section 185030.~~

34 ~~(b) The report, at a minimum, shall include a programwide~~
35 ~~summary, as well as details by project segment, with all~~
36 ~~information necessary to clearly describe the status of the project,~~
37 ~~including, but not limited to, all of the following:~~

38 ~~(1) A summary describing the overall progress of the project.~~

39 ~~(2) The baseline budget for all project phase costs, by segment~~
40 ~~or contract, beginning with the 2009 business plan.~~

- 1 ~~(3) The current and projected budget, by segment or contract,~~
- 2 ~~for all project phase costs.~~
- 3 ~~(4) Expenditures to date, by segment or contract, for all project~~
- 4 ~~phase costs.~~
- 5 ~~(5) A comparison of the current and projected work schedule~~
- 6 ~~and the baseline schedule contained in the 2009 business plan.~~
- 7 ~~(6) A summary of milestones achieved during the prior year~~
- 8 ~~and milestones expected to be reached in the coming year.~~
- 9 ~~(7) Any issues identified during the prior year and actions taken~~
- 10 ~~to address those issues.~~
- 11 ~~(8) A thorough discussion of various risks to the project and~~
- 12 ~~steps taken to mitigate those risks.~~